RENT CONTROL: CONSULTATION MEETINGS

A SUMMARY FROM

THE MINISTRY OF HOUSING

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A MESSAGE FROM ONTARIO HOUSING MINISTER DAVE COOKE

On February 18, 1991, I released a discussion paper called ''Rent Control: Issues and Options,'' which was designed to elicit the public's views on a new rent control system for Ontario.

I am proud of the extensive public consultation that followed. Thousands of tenants, landlords and other interested citizens were invited to help shape a permanent system of rent control that strives to bring fairness to the rental housing market.

In well-attended public meetings and in smaller round-table sessions in 20 communities across the province, some 1,300 people participated in a discussion about the principles and proposed specifics of a new system of rent control for Ontario. The consultation would have been meaningless without their input.

More than 300 of those people personally shared their ideas, concerns and experiences with me, my Parliamentary Assistant, Niagara Falls MPP Margaret Harrington, and my caucus colleague Wentworth North MPP Don Abel.

This report summarizes the main themes that emerged from the cross-province public consultation. Its purpose is not to try to sell specific government policy, but to present the wide range of views and assumptions that people brought forward in the course of the consultation.

In compiling the results of almost 90 hours of consultation, it would have been impossible and impractical to report every statement from every presenter. We have done our very best to quote accurately, to recount presenters' comments in their intended

contexts, and to respect the anonymity of those participants who spoke in the informal sessions while including their perspectives in the summary.

Again, I would like to extend my sincere thanks to everyone who took part in the consultation process. In particular, I would like to acknowledge the dedication of Housing Ministry staff and the hard work of my colleagues Margaret Harrington and Don Abel.

I also want to thank the thousands of others who sent letters, briefs and completed questionnaires to our office. Some 500 submissions and 17,000 completed questionnaires have been received in total.

I believe this consultation process serves the government and the people of this province well, and I look forward to continued consultation after the permanent rent control legislation is introduced next month.

Sincerely,

Dave Cooke
Minister of Housing

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1. The Scope of Rent Control

Long-Term Care Facilities

In Barrie, Ottawa, Windsor and Etobicoke, representatives of the Ontario Long-Term Residential Care Association expressed concern about the proposal to apply rent control guidelines to retirement homes. In Ottawa, Lionel Kirby said residential care is a specialized, 24-hour service intended to assess the needs of older adults and maximize their independence. Across the sector, annual rate increases over the past two years have been well below the 5.4% rent review guideline for 1990, despite one highly publicized exception. Historically, the Association has been a firm advocate of full disclosure of all costs before patients are admitted, and has supported the need for provincial regulation of long-term care centres. Mr. Kirby expressed interest in meeting with Ministry staff to discuss the matter at greater length.

Social Housing

"Why is it necessary to exclude non-profit housing from rent control?" asked a tenant representative in Barrie. It was explained that rent review is not now applicable to rent-geared-to-income units, but the presenter responded that tenants are often given last-minute notices of rent increases and sometimes face a retroactive increase. He claimed that the largest property manager in Barrie was advised on "how to get around the 90-day rule" at a local Ministry of Housing seminar. The subsidy, not the rent, is perceived as variable, and therefore subject to manipulation. A Toronto tenant advocate stated that rent control should be extended to the non-profit housing sector, because "it's not appropriate for tenants to rely on the benevolence of the provider."

A community legal worker in Ottawa pointed out that rent review did cover public housing when legislation was first enacted. When the rules were changed retroactively, many people were unable to pay the arrears that resulted. She said public housing tenants need protection now because it is theoretically possible for their rents to be raised every month, as long as they receive 90 days' notice of each increase as specified by provincial legislation.

Asked whether her comments applied to market or rent-geared-to-income (RGI) tenants, she said a subsidized rent should not change until the end of a 12-month period, even if there is a change in household circumstances: "If somebody is paying $200 a month in rent and they do get a good job, it's going to take them some time to get back to where they can afford to feed their family properly," she

noted. A related concern is that rent reductions through the Ontario Housing Corporation are paid through "forgiveness," not by formally reducing the rent on a unit, so that the charge can later be increased without the usual 90 days' notice.

An Ottawa tenant organizer agreed with this point, and asked whether the Ministry knows how many tenants have filed for personal bankruptcy in light of the recession. This information is particularly important, he said, "given that landlords are arguing against rent control because some of them *may* go bankrupt."

A North Bay tenant said it is inconsistent for the government to exempt from rent controls public housing units it happens to own. Toronto tenant Howard Brown said the Beyond the Living Room Committee argued that "CityHome tenants need a system of rent control that does not leave them at the hands of city councillors."

A Willowdale landlord said "the government would understand the problems landlords face" if public and non-profit housing were subject to rent control.

Mobile Home Parks

Several participants across the province argued that mobile home parks should be covered by rent controls. Concern was expressed about inadequate services, extremely high rent increases, and the prospect of economic eviction for tenants on fixed incomes. Valerie Poulton of the Hamersveld Trailer Group in Whitefish, outside Sudbury, said most mobile home tenants are long-term residents; many have attached expensive additions to their homes, and some of her neighbours have been living on the same site for 15 to 20 years. Mobile home park operators in some sessions argued against extension of rent controls, and identified a number of special challenges they face in their communities.

Coverage of New Buildings

"I would never move into a building not covered by rent control," said one Barrie tenant, responding to the suggestion in the Consultation Paper that new buildings might be excluded from rent control for five years. The participant said her landlord had been granted a 23% rent increase, after making $300,000 worth of repairs that were opposed by the tenants. A London tenant organizer said a five-year exemption for new units would be acceptable because "it gives them a chance to build".

A Weston landlord said five years would not be an adequate exemption period for new buildings. "It would create instability," he said, adding that "government tinkering" is responsible for current rental supply problems. One Islington landlord said a five-year exemption would be "an excellent idea".

2. Annual Rent Increases

Statistical Basis for Annual Guideline

Several participants underscored the importance of finding a clear, simple way of calculating annual rent increases. Many of the presenters who addressed the issue of a three-year average were in favour of levelling out the impact of inflation, and of establishing a cap to minimize hardship on the part of tenants. One small landlord, who emphasized the importance of knowing that his tenants are happy, said he supported a three- or four-year rolling average, but opposed any overall cap that failed to account for national economic trends like high interest rates. Another small operator opposed the rolling average, stating that "the smoothing comes off the bread on my table," and noted that there is no way to average the interest rate increases that he pays the bank.

Landlords at the Richmond Hill meeting agreed unanimously that the guideline should be flexible, not fixed. One property manager commented that flexible guidelines were originally introduced to reduce the "adversarial situation between landlords and tenants."

A Richmond Hill landlord said three-year averaging should be removed from the guideline formula, so that "this year's inflation rate would be next year's increase." He said it is frustrating for landlords to wait until July to find out the next year's guideline. A Guelph landlord said a three-year average is an automatic cap, and should be sufficient to protect tenants. In the same session, a Kitchener property manager said a cap "penalizes the landlord again, because there are costs that we've incurred...When I see the word 'cap', it flags something for me."

The London and District Labour Council said a flexible guideline would be appropriate, as long as it remained 0.5% to 1% below the inflation rate. "The rate of a worker's wage increase is always less than the inflation rate," said LDLC representative Sandy Bell. "We do not feel that landlords deserve a better COLA than tenants." She added that a cap on this rate "is a must". A legal worker in Welland said rents "should go down as well as up," to reflect changes in different cost factors.

A tenant representative in Niagara Falls said flexibility in rent control guidelines should only apply to operating costs; he also suggested that the rent per square foot and any additional costs should be posted in the lobby of each building. An Etobicoke tenant said landlords will have to adjust to making a low profit. "We all have to realize that we're going to live with low incomes," he said.

"These are not prosperous times. Landlords are not entitled to the rate of inflation."

A landlord in Owen Sound questioned why the guideline allowed for inflation. "What's the objective? You're guaranteeing that the cycle of inflation continues. By automatically giving the 5%, you're inviting more inflation." A fairer guideline could be based on the differences between buildings, he said. A Hanover tenant noted that interest rates are higher for borrowers with a history of poor financial management. "We shouldn't have to pay for poor managers," he said.

A tenant organizer in Niagara Falls suggested two classifications for landlords of different sizes. Another tenant said there should be different treatment for owner-operated buildings and high-rises. A Welland landlord said there should be "enriched guidelines" for landlords who are applying to rent review for the first time, explaining that she had been penalized because she had not applied early enough.

For at least one Ottawa landlord, caps and limitations on operating costs represented an unreasonable level of government control in the rental housing market. A landlord advocate in Kitchener argued that "rent control does not serve the people of Ontario. It only serves the tenants of Ontario who do not require financial assistance...Food and clothing are also basic human rights, and I don't see you imposing restrictions on the suppliers of these commodities."

But one small landlord and city administrator said the discussion should start out from the assumption that rental housing is a major industry analogous to a utility like Bell Canada. "There has been a wrong spin put on this by all governments," he said. "It's a regulated industry, and we should be following the rules of regulated industries, whether we like it or not." With respect to the Green Paper, he noted that "the word 'capping' is mentioned many, many times, and as an underlying principle there would seem to be some merit to capping." This approach would avert "unconscionable increases" demanded by a minority of landlords, in a way that "doesn't do violence to the whole industry." A landlord in Sault Ste. Marie commented that, "given that we have to have some form of rent controls, we've learned to live with a rent control system that generally seems to work reasonably well. We've done some rent review applications, and if an increase has been required it's come through."

For the sake of simplicity, one tenant organization suggested a flexible guideline based on inflation, leading to a 2% guideline for

inflation between zero and 3%; a 4% guideline for inflation from 3.5 to 6%; and a 6% guideline for inflation over 6%. Some tenants supported the proposal to eliminate fractional increases, although a Hanover tenant reflected the view of several tenants and landlords in suggesting that the guideline needn't be simple as long as it is fair. "Regardless of the method used to calculate a guideline, most people would never want to figure it out," he said. A Haileybury landlord stated that "the further you simplify it, the less meaningful it is to anyone, because what's the basis?" A Hamilton property owner commented that "you're not going to succeed in being simple and fair – you're either going to be one or the other."

An access-to-housing advocate in Thunder Bay underscored the need for a flexible approach that reflects regional differences. She said the affordability standards for housing established by the last provincial government should have succeeded, but failed to reflect local realities. "Theoretically everything is affordable, and yet you have these 700 people on the waiting list (for non-profit or public housing)," she said.

A number of other tenants spoke in favour of a flexible guideline. "These older buildings got in trouble because their rent was fixed, and they couldn't keep the buildings up," said a tenant council representative from Amherstburg. Meanwhile, some other operators "had inflated the rent so excessively that a 5.4% increase in our building may be a $60 monthly increase in rent." Limits on landlords' profits may be the only way to address the fact that a one-bedroom apartment in Amherstburg now costs $800, most units are over $1,000, and some are in the $1,200 range. "Something has to stop somewhere, and I think it has to be based on the profit that the landlord is making," the tenant said. "They should make a fair profit, we agree, but not an excessive profit." A tenant representative from North York said the 1% profit component should be removed from the guideline calculation, because "it's not needed." Rents in Ontario have increased more than 100% in 17 years, he said, and "in 10 years rents will increase by 50%. People on a fixed income will not be able to live in Toronto anymore."

A Scarborough tenant was surprised the guideline allowed for capital expenditures and profit. "I have a serious problem with that. My landlord is already taking a big profit." Another tenant in the same session said a fair return for landlords should be calculated by looking at the investment made. "Let's talk about profit as a percentage of investment, not a percentage of equity," she said. "My landlord bought the building for $3.5 million, mortgaged it out for

$20 million, and put the mortgage on a mall in Alberta.... Landlords' major complaint is that they are not getting market rents based on today's costs, but they built them for much less many years ago."

A landlord from Willowdale said the 1% profit "sounds great, but we never got 1% this year." She recommended a version of the CPI "modified to truly reflect building costs," and suggested that the guideline should be open for discussion by tenants and the landlord of each building. Other landlords made similar recommendations.

A Toronto tenant organizer said the formula for the guideline must separate each element, such as operating costs, profit, capital expenditures, and inflation, because "any attempt to pool it all gets complicated."

Several participants addressed the question of a cap on annual rent increases. Many landlords were opposed to any limit, expressing concern that they would never recover costs if their increases were capped. A representative of the Society of Rent Review Consultants of Southern Ontario suggested a 10% cap on increases above the guideline, so that a guideline of 5% would translate into a 15% maximum. But tenants in many communities expressed concern that even an inflationary increase would represent economic eviction for those in greatest need. "When you get into low-income people, 5% is a lot, let alone 10%," said a tenant in North Bay. "My shelter cost is 46% of my income, so any increase is going to be tough for me. Even the guideline will be tough." A welfare rights advocate in Kitchener said she had faced economic eviction and homelessness, just seven weeks before she was due to give birth. With a monthly rent increase of $100, shelter costs would have consumed 60% of her income.

Landlords in several communities identified rent subsidies as an alternative to rent controls, based in part on the recommendations of the Thom Commission. "I see this as a golden opportunity to reduce rent controls, not increase them," said one small landlord in Kingston. Another Kingston property owner said 10,512 tenants could have received a $325 monthly subsidy with the $41 million spent to administer rent controls in the 1989 fiscal year. A tenant in Thunder Bay suggested some form of "hardship release for tenants, where there are large rent increases that amount to economic eviction." Low vacancy rates make this particularly important, she said.

Many landlords said rent control should be designed to weed out the excesses that have taken place without penalizing those who operate their buildings in a fair manner. Some said the government should allow local vacancy rates to determine rental costs. "If a person can't find shelter cheap enough to serve them, it doesn't mean

the landlord is gouging," one participant said. "It means their income is too small, or they're spending too much on other things."

A Mississauga realtor said any guideline for annual rent increases must be applied to every unit in the province. Several Mississauga landlords suggested each rental building be evaluated against a "standard" apartment building, before land costs are calculated, arguing that individual assessment is the best way to level out disparities in the current market.

An access-to-housing advocate in Thunder Bay said that, with a 0.9% vacancy rate in the private sector and no vacancies in non-profits, "there has to be a balance between tenant protection and the need for landlords to recover their costs and make a reasonable profit. She said one important cost factor in any community is the proportion of available land that is controlled by large real estate companies. According to a labour representative in Thunder Bay, "what's necessary is to have the legislative controls, and at the same time to have the public sector provide more housing on a non-profit but self-sustaining basis. This would provide a market alternative, and keep the private sector from using the lack of housing as a weapon to club governments over the head and say that rent controls are resulting in an inadequate supply of housing. The two sides are absolutely essential."

A participant noted that economic evictions are a continuing problem in Thunder Bay, and called for caps on rent increases at the lower end of the market. "Most people who are working poor just can't manage if they get a 30% rent increase," she said. "They don't have much negotiating room in their budget." The only way to meet a major increase is to obtain some form of government assistance, "so the government is just paying it out anyway."

A representative of the London Union of Unemployed Workers had similar concerns. "London has one of the highest job-loss rates in the province," she said. "The number of victims of poverty is rising. Rent controls have failed miserably. Affordable housing should be seen as a basic human right." Another London participant said while there are many vacancies in the London rental market, she said the vacancy rate for affordable units is only 0.1%.

A Windsor legal worker said any increase may be too much for a single parent, workers' compensation recipient, or senior citizen on a fixed income. "What they're frightened of is when is it ever going to stop," she said. "Their income doesn't go up 5.4% each year, and then they start digging into the food money and the clothing money." Despite the paperwork involved, she said tenants should be able to

challenge any rent that cannot be justified based on an increase in the landlord's costs.

Timing of Annual Increase

A participant from Cornwall said either a province-wide or regional anniversary date would help make tenants in his community more aware of the rent control system. Many of the tenants and some landlords who addressed this question spoke in favour of a common anniversary date for specific buildings; virtually every presenter who commented on a province-wide date identified serious logistical problems with such an approach, such as the need to coordinate moving vans, elevators, and in-suite repairs and decorating.

Some participants, such as the Barrie Builders' Association, said a building anniversary date would cause undue confusion, and John Gleason of the London Property Management Association said "there is no reason to introduce a common anniversary date. The present system is successful." A St. Catharines legal worker said a common rent date "would be chaotic," while a large landlord in Toronto warned that "people wanting to move to a building will not be able to if their dates don't coincide." Sandy Bell of the London and District Labour Council said a building anniversary date would be the most simple and efficient approach, provided that an improved provincial rent registry made it possible to trace the amounts and dates of increases. One North Bay tenant said she supported a building anniversary date, as long as the transition does not lead to more than one rent increase in a single year. In the same community, a landlord expressed concern about the possibility of missing an increase because of a common date.

Maximum Rents

The gap between actual and maximum rents is a source of confusion for tenants. One community legal worker noted that tenants have no idea of the difference between the two, and therefore find it next to impossible to determine whether a proposed rent increase is legal.

Some tenants argued that maximum rents are less realistic than the actual rents that landlords are charging for their units, and that the actual rents should be registered as the basis for future increases. One rental property manager said landlords have been able to use maximum rent figures, which can exceed actual rents by up to 20%, to show commercial lenders the potential for increased earnings in the future. A Sault Ste. Marie landlord stated that maximum rent "is a very important concept. If the rent is lowered in bad economic times and the landlord can't get it back in a couple of years, he's

definitely out of business. He's finished. He'll bring the keys to the mortgage company or turn them over to the city – whatever is required." A Sarnia landlord said she did not want to be responsible for economic evictions, but indicated that she is now raising all her rents to the maximum to ensure that she doesn't lose the option of doing so.

3. Increases Above the Guideline

Utilities, Municipal Taxes, and Extraordinary Operating Costs

Participants who addressed this point generally agreed that increased costs related to utilities and municipal taxes are beyond landlords' control, and constitute a reasonable basis for increases above the guideline.

Sandy Bell of the London and District Labour Council said the only acceptable increases above the guidelines should be for municipal taxes, heat, water and hydro, minus any rebates a landlord receives for improved energy efficiency. "Landlords complain about their day-to-day operating costs, hoping that we will forget about the increase in value they accrue over the years for owning the property," she said.

In the Ottawa session, a presenter from Renfrew noted that the commercial property taxes applied to buildings with more than six units are 90% higher than the levy for smaller buildings. Some expressed concern that this leads to unfair differences in the rent charged for similar units in different buildings. The same issue was raised by landlords in Thunder Bay.

A mobile home operator from Strathroy said utility costs are more difficult to calculate for land-lease communities. "If park-supplied water and sewer need to be repaired or replaced at significant cost, it's called a capital expenditure, but is not allowed to be passed on to the tenant," he said.

Many landlords identified the federal Goods and Services Tax as a hardship that will be aggravated by tougher rent controls. An Oshawa tenant responded that "that's a business expense. When the federal government put GST on my golf club fees, GM didn't raise my pension. Why does the tenant have to pay every time taxes go up?"

A number of tenants argued that maintenance costs are already included in base rents, and should not be allowed as a criterion for increases above the guideline. Some tenants said they would be willing to pay more for maintenance, as long as the increase could be capped and there could be an iron-clad assurance that the work would actually be done.

Toronto landlord Jonathan Krehms questioned why some operating costs were singled out for inclusion in guideline increases. "I have no more control over the cost of plumbing parts than I do over hydro," he said. A St. Catharines property manager said appliance costs

should be charged to tenants, recalling a building in Windsor where "we went through fridges like crazy because of an electrical problem."

"Annual rent increases should not allow for ongoing maintenance, capital improvements and the landlord's profit," said another North York tenant, adding that the guideline should be based on the overall to the performance of landlords. "For example, if a landlord has received work orders for failing to maintain the apartment building or apartment suites, that landlord should not be entitled to a guideline increase for the following year."

An Oshawa landlord described a land lease that had increased in price from $14,025 to $127,166 per year over a 20-year period, representing a $177 rent increase per unit per month.

Interest Rates

A Thunder Bay participant was one of many landlords who said changing interest rates must be recognized as an extraordinary cost factor over which owners and managers have no control. "If a landlord is not allowed to pass on an interest rate increase of 5%, which is not inconceivable, where might the landlord be the next time the mortgage comes due?" Two of the landlords in this session also noted that lenders are generally unwilling to allow longer amortization periods, and that a five-year extension on a sizeable mortgage can translate into tens of thousands of dollars in additional interest costs. A Markham property manager said interest rates should be passed through to tenants because "tenants should not be insulated from the real world. A tenant doesn't struggle to meet the mortgage, and landlords don't set interest rates."

Two landlords in Thunder Bay expressed concern that a pass-through for interest rates would have the effect of discriminating against buildings that are free and clear of any mortgage, particularly if a new buyer is unable to pass through financing costs.

However, a number of presenters across the province were adamant that interest costs should not be the basis for increases above the guideline. Barrie landlord Dino Melchior said a rent increase approved as a result of higher interest rates should be rolled back if rates later drop. A housing worker in London said increases due to interest rate changes should not be allowed. A tenant organizer in the same session said tenants rarely have any say in the decision to refinance a building, but "often end up paying the shot". A community legal worker in Welland said interest rate changes should be allowed "when reasonable," but noted that landlords' mortgage purchases are not always arms-length transactions.

A labour representative in St. Catharines noted that "if interest rates rise as they did in '82, tenants will not be able to pay." Janet Lisboa of the High Park Tenants' Association in Toronto said high mortgage costs result when landlords "put down as little as possible to take advantage of the RRRA." A higher downpayment and the removal of the financial loss clause would go a long way towards ensuring that the right type of landlord enters the market. "No other business in the world guarantees a certain amount of profit to the investor, and housing should be the last commodity to do so." Toronto tenant Douglas Jones called for an annual increase "based on the cost of living and interest rates, which are declining."

Consultants and Other Fees

Several tenants agreed that landlords should not recover administrative costs and consultant fees associated with rent review submissions. A presenter in Ottawa described the provision as "nothing short of despicable". One landlord said it was necessary to cover consultant fees under the old system because RRRA made rent review so difficult to understand. A London tenant organizer said tenants should be able to apply agent and consultant fees against their personal income tax, since they cannot deduct them from rent. A Mississauga tenant expressed concern that "the management company or landlord will hire expert legal counsel, a pass-through cost for which I am paying. A tenant hesitates to go to any kind of hearing, because all you're doing is heaping more rent on yourself."

One small landlord said he agreed with limiting the range of extraordinary operating expenses, and with disallowing any claim for rent review consultants. However, he said he would need to claim some salaries and fees if he ever had to hire staff to run his building in his absence. A landlord in Markham said consultant fees should not be passed through because tenants cannot deduct them from their income tax, but said legal fees must be allowed. A rent review consultant from Thorold said consultants' fees should be allowed because "tenants get free advice from legal aid". In the same session, a St. Catharines landlord recalled that she spent $28,000 in legal fees for one unit.

A tenant organizer in Niagara Falls said there should be no provision for miscellaneous costs, noting that his landlord had passed through nearly $6,000 in miscellaneous expenses in the previous year.

Financial Loss and Economic Loss

Small landlords in some communities presented specific figures indicating that they are losing money on their properties, so that their eventual income – and, in many cases, their retirement funds depend on capital gains from the eventual sale of the buildings. Resale values, in turn, will depend on the rents that future landlords will be allowed to charge, as well as the gradual appreciation of the actual properties. Disrupting this system with more stringent financial loss conditions could mean that some smaller landlords lose their investments.

The potential for a capital gain upon resale "is basically why I invested in the building in the first place," said an Ottawa landlord, who said he is losing $1,635 per month on a three-bedroom garden home. "What I ask you to consider is, what does a rational person do in this situation? You look around for a better investment that will yield a better return. You don't have to look very far, just as far as your nearest trust company or Canada Savings Bonds." Another option is to invest in real estate in jurisdictions that are free of rent controls.

Several presenters said landlords are already abandoning the industry, to the point that there is now a surplus of duplexes for sale. One landlord said Ontario's 1% vacancy rate will evaporate if 2% of the rental units across the province are lost, while a shortfall of 60,000 units will develop if 10% of the units are lost. "This process is now well under way," he stated. "You can't see it from the street, but you can't stop it from happening." Tenants in Windsor, on the other hand, were confident that financial hardship under a new rent control system would be limited to landlords who made poor business decisions under Bill 51. Joe Krall of the Federation of Windsor-Essex County Tenants' Associations said properties will eventually be picked up, even if the inability to charge speculative prices limits the range of potential buyers. One Richmond Hill landlord said the private rental market will attract investors looking for a tax write-off, instead of dedicated landlords, if financial losses are not allowed.

A chartered accountant in Sudbury stated that "if I can get 3% on an apartment building I'm a pretty happy camper," even if Canada Savings Bonds pay 10%, because the net gain from an unsheltered investment is only about 4%. He said the key to ensuring the viability of landlords' investments is to understand that "financial loss is not the problem. It's the manner in which it became a problem." Until 1986, he said buildings were purchased to return 11% on debt and equity; financial loss provisions were brought in when this basic calculation was changed. New construction has been stalled

ever since, "because why build it when you can just buy it and flip it?" While a decision process involving 10 landlords/business operators and 10 tenants may have been "kind of one-sided," the participant said the outcome of the process "was fair but a bit imbalanced. Whoever the Minister of the day assigned to review this didn't see the multiplier effect, and that's what happened." In the Kitchener session, it was noted that tenants reluctantly accepted the financial loss provisions with the understanding that new housing construction would result; three years later, that promise had not been kept.

One small landlord in Ottawa supported removal of the hardship relief clause as a means of eliminating future escalations in resale values. However, he said retroactive provisions in this area would unfairly victimize owners whose business commitments were based on the rules contained in Bill 51. Windsor lawyer Dewar Laing described the financial loss clause as "a fundamental right that has to be guaranteed in any legislation," since "the only way a landlord can realize a profit on property he has maintained over any number of years is to sell it for fair market value." A Scarborough landlord said a building's appreciation should not be factored in when rent increases are calculated. "I must pay income tax on appreciation, plus capital gains tax if I sell," she said. "Apartment buildings are not appreciating in value very much," added another landlord in the same session. "Appreciation is not guaranteed. Private rental is a dead market."

A number of tenant representatives, on the other hand, said rental housing in Ontario is a multi-billion-dollar industry, and noted that no other industry expects or demands a guaranteed return on investment. One presenter said the financial loss clause had been a rallying point for tenant organizations, noting that "we tried to put it in our own terms by imagining that we could wildly borrow more than we could hope to pay back, buy the only asset that is guaranteed to appreciate, and then get someone else to pay our debt. In the 1980s, the buyer need no longer beware." The option of a financial loss clause, he emphasized, "must never enter the legislation."

A Windsor tenant said there is absolutely no obligation on tenants, or on the new government, to "subsidize someone who has invested foolishly," suggesting that "landlords are the only group that have a legislated guarantee that they will get bailed out." In the public session in Windsor, Joe Krall of the Federation of Windsor-Essex County Tenants' Associations drew an analogy to the purchase of a private automobile: "Before making this purchase, an intelligent consumer must calculate all purchase and operating costs, including routine maintenance and repairs," he said. "It defies logic to say a

landlord could make an intelligent purchase and now be in a financial bind." If increases over the guideline are to be allowed for capital expenditures, Mr. Krall said the government must preclude eligibility for all "non-prudent" landlords – which he suggested would not be a problem for operators who see themselves as prudent and hard-working.

An anti-poverty advocate in Hamilton noted that a landlord who owns a building based on a 10% downpayment of $8,900 has paid less for the privilege than a tenant's annual rent of $9,600. Landlords are upset that the Green Paper excludes consideration of financial loss, "but it's failed to address the same losses that would occur to a tenant on the sale of that house."

A community legal worker in Sault Ste. Marie said the Green Paper proposal to disallow pass-throughs for financial loss would make prospective buyers much more cautious about the maintenance and repairs that a building might need. A lawyer in Windsor said a minimum downpayment should be required when a landlord buys a building. At present, she said purchases are based almost entirely on borrowed money, and tenants are left with the financing costs. A small landlord in Hamilton described the opposite situation, explaining that he had paid the mortgage on his building out of personal savings and would now like to see that equity acknowledged. A Kitchener landlord said the permanent legislation should permit small operators to value their own work on a property at a nominal rate of $15 or $20 per hour.

One tenant in the Kingston session presented a detailed analysis of the financing and refinancing that had taken place in his 47-unit building since he and his wife moved in in 1974. He suggested that "capital gains should be taxed at 100% forever and ever," noting that the capital cost of the building had increased from $600,000 to $3 million over a 16-year period. "In our building, the maintenance and operating costs have roughly doubled, yet the capital cost has gone up 500%. When we moved in, our rent was $140. It's now $585. If this had not happened, the cost of our apartment would be in the neighbourhood of $300, so we're paying almost $300 for all this capital cost. Absolutely no one benefits from it – not even the landlord – because everyone skims off a little and nobody gets rich."

A veteran property standards officer recalled that the introduction of rent controls in 1975 was an "excuse for developers to take money out of their buildings." "These people were telling us informally that the name of the game from their point of view was not to maintain any equity in these properties at all," he said. "This was a business where you could make money by using other people's money, and it was a good business to be in."

A speaker in London noted that "there is no guarantee of income. Landlords should receive a fair return, but they take their chances." Bill Armstrong of the Tenants' Protective Association in London agreed that landlords are entitled to a profit, "but some receive 30 to 60% rent increases and still neglect building maintenance." Burt Rupple of the 1095 Jalna Tenants' Association in London said his own business earns a 3% rate of return and asked for a more specific definition of the margin that is considered reasonable for landlords. He also noted that landlords are often able to make investments against their properties; other presenters pointed out that this income is not calculated when rent increases are proposed or decided. A North York tenant stated that "arms-length transactions need to be clearly defined," since the profits accrued by landlords who transfer money from company to company are generally invisible in the rent control process.

A tenant in London said there should be no coverage for economic loss. "My landlord said he couldn't afford to pay the mortgage three months after he bought the building," he noted. "Then why did he buy it?" A tenant organizer in the same session agreed that "a business cannot dip into the purses of its customers to make up for its own folly."

Economic losses have caused large rent increases in the apartment of one Owen Sound tenant. The tenant explained she did not expect the increases when she moved into the building four years ago. "The apartments are for seniors, yet the rent has gone up steadily, at least 15% each year. We lost six tenants who had planned on spending the rest of their lives there."

On the other hand, one London landlord stated that "to have no option for losses is a sham." Geoff Glass of Guelph stated that "if your government follows through on not allowing rent increases due to financial loss, economic loss, and mortgage rate increases, I'm afraid I may have no other option but to withdraw from the rental investment market."

An Orillia landlord stated that apartment units have increased in value 2.5 times in 15 years, while private homes have increased six or seven times. As a result, "we're in a loss situation".

One landlord said bad debts involving evicted tenants represent a $9 million annual loss for his company. Twelve per cent of his tenants were delinquent, and "good" tenants are forced to absorb the losses. "The (legal) system doesn't work," he said. "We had 6,023

negative files in Sarnia alone in the last five years. Will the government give landlords the right to garnishee social assistance?"

Equalization

Although several participants spoke for and against equalization, there was no consensus within either the tenant or landlord community. A Thunder Bay landlord questioned whether it would be possible to close the gap between units without creating "a rift between the tenants". A London tenant organizer said equalization is likely necessary, but could result in "impossible costs for those on a fixed income" if it is brought in too quickly or with too little planning. Other participants said equalization is only as fair as the higher rents that are involved, so that the process could have the effect of compounding past injustices.

A North Bay tenant said equalization will only increase disputes among tenants. He added that in his building, the landlord is keeping nearly 100 apartments empty, and should not be permitted to renovate and raise the rent of these apartments, then try to equalize the lower rents of the occupied units. Another tenant in the same session said his federation is "absolutely opposed to equalized rents," because tenants who rented when prices were low "would be penalized if their rents were equalized now. It would cause hardship on long-time tenants and disputes among tenants." A Willowdale tenant said equalization in his complex "created less tension and a lot of satisfaction." Janet Lisboa said the High Park Tenants' Association in Toronto had conducted an extensive survey, which concluded that equalization would have a negative impact on senior citizens and long-term residents. "The majority of tenants would suffer," she said.

A number of landlords said equalization is the only solution for buildings that were below market rents when rent controls were first imposed in 1975. One Hamilton landlord said increases of 15 to 20% are needed in some buildings "because the market is crazy" and "free enterprise has to be allowed to work". A Hamilton rent review consultant said equalization would redress cases where well-maintained buildings with long-term owners have lower rents than deteriorating properties that are frequently flipped. "You're starting out with a fundamental inequity," he said, and "you're magnifying that inequity. If you add the guideline annually, the spread just widens."

Chronically Depressed Rents

A landlord in Windsor said below-average rents should be subject to higher increases. In the same session, landlord Ed Meyer said rent control should be phased out in buildings with 10 units or less as the

apartments become vacant, 10% of the units in larger buildings should be provided to local housing authorities at cost, and public funds now allocated to public housing should be allocated to direct subsidies for those in greatest need. A Barrie landlord said rents in his community were "artificially low" when rent controls were first imposed, and warned that there will be "a revolt of landlords" if controls are tightened.

A Toronto landlord dismissed suggestions that allowing exceptions for chronically depressed rents was complex. "If you don't do it, an injustice will be continued," he said.

Landlords in several communities expressed concern that they would never be able to recover rent increases that they had foregone in previous years. An owner from Peterborough said he knew of buildings that would still be underpriced after a 600% increase. Hamilton-area landlords suggested a cap based on a fixed percentage or a maximum dollar value, to account for large percentage increases on relatively low rents.

4. Capital Expenditures

Funding Capital Expenditures

An Ottawa tenant organization expressed strong interest in finding a workable model for a capital reserve fund, and in exploring what has become of "all the extra money we gave landlords under RRRA, and why that isn't being seen as a ready source of capital." The group also expressed concern at the possibility of a cost pass-through for capital expenditures, particularly for tenants whose apartments are now only barely affordable to them. "We would want to know if, in fact, the Minister has a predisposition to a cost pass-through, and what extra precautions might be taken so that tenants don't continue to lose ground," said one tenant representative.

An East York tenant said any costs that are passed through to tenants "should be a separate charge, not added to rents, that would be removed when paid." Tenants should receive a financial statement detailing the charge, she added.

"Reserve funds are a novel approach in the private market rental sector," said a tenant advocate speaking in Barrie. "A reserve fund is completely justified," he continued, noting that there is not much incentive at present for landlords to set aside money for capital repairs.

One small owner in Ottawa said she had no objection to maintaining her property, but saw a mandated reserve fund as one more way of taking away her livelihood. A property manager from Sarnia said the 10% capital reserve required for condominiums is charged directly to owner/occupants. He suggested this might be an appropriate basis for reserve funds in rental properties, except that the percentage might be higher than 10% in small buildings and as low as 6% in large complexes. One Sault Ste. Marie landlord said a reserve fund would result in "incredible rent increases that the tenants are going to have to pay in order to finance the fund".

A presenter in Sudbury said mandated replacement reserve funds in co-op and non-profit developments might be an appropriate model for private rental housing. He said the model would be especially applicable to larger buildings, and noted that "it makes sense to require that all new buildings establish a fund," and to ensure that the fund belongs to the building as a trust, not to the landlord. "If it's not set up with strict rules, with tenant participation, and with severe penalties, the landlords will be using the fund to replace faucets rather than the whole plumbing. You have to be able to charge somebody with fraud for misuse of the fund."

A Thunder Bay property manager said federal taxes will double the amount required for building reserve funds, and described a two-year-old condominium project where "we won't have remotely enough money" by the year 2000 with a 10% reserve fund. She also questioned whether tenants would understand long-term maintenance needs. The Barrie Builders' Association questioned the prospects for establishing a reserve fund because of the high initial expenditure involved.

A number of landlords predicted that a province-wide reserve fund would be difficult and costly to administer. A Mississauga tenant said a provincial reserve could "end up like the Savings and Loan disaster in the United States. It's a very dangerous idea from a taxpayer's perspective." A member of the Fair Rental Policy Organization of Ontario said a provincial reserve fund "incorporates the worse feature of rent control – the failure to target effectively." The fund would not reduce complexity, he said, and landlords would fight for their share of the fund, forcing the government to limit the amount available to a building each year. "The reserve would be unfair to small landlords," he concluded. "It only works fairly if everyone has an equal ability to opt in." A tenant group in Hamilton and a legal clinic in Sault Ste. Marie expressed support for a province-wide fund. One presenter in Sault Ste. Marie said the reserve could be organized as a revolving fund, similar to an insurance pool, providing interest-free loans to meet unexpected contingencies. The loans could then be paid out of equity when a building is sold. Other tenants said tenant associations should have a role in managing the funds.

One former landlord said the province should establish a public investment fund that would help insulate landlords from high commercial interest rates. "My main concern is really not for myself," he explained. "We have a lot of disabled and elderly in the province, and it's very hard for some of these people to cope. With increases of $100, some of these people are asking where they're going to find the money." Recalling the high interest rate on his own investment, he said a rate of 6 to 8% would have been extremely helpful, if only on the $1,500 he had paid up-front to buy down his mortgage. Sandy Bell of the London and District Labour Council said low-interest loans would be an appropriate way of supporting capital improvements; Murray Genraich of the Bayview Village Tenants' Association in Toronto said provincial support would be especially important in the early years of a reserve fund. A small landlord in Toronto said he opposed the establishment of reserve funds in older buildings. "The reserves could not be built up because they would be continually drained," he said. "I am not over-mortgaged, but I would not have enough money to pay for capital expenditures."

An Owen Sound tenant said tenants and landlords should share the costs of capital expenditures. "I'm a 15-year tenant. If I'm willing to go halves, the landlord should be willing to go halves with me. My pay doesn't cover the full cost."

Limits on Capital Expenditures

One landlord said it would be reasonable to distinguish between unnecessary repairs and those that were essential to the structural integrity of a building, particularly if essentials were not subject to tenant approval. Another small landlord said he would support a cap on annual rent increases to fund capital expenditures, as long as his costs could be covered through a phase-in over time.

A landlord in Thunder Bay questioned the validity of a cap on necessary capital, calling for some distinction among landlords. "My understanding is that some landlords have taken advantage of loopholes they were able to find in the legislation," he said. "In that case, I think they should be penalized. But you can't start cutting back and treating all the landlords the same." Another participant in the same session echoed the suggestion in other communities that landlords should somehow be regulated according to the size of their holdings. In Toronto, one speaker said she represented the great majority of landlords who are "just trying to run a business, with no malicious intent....Tenants are my customers. I live with them under the same roof. I water their plants and feed their cats. Where is this animosity coming from?"

London property manager Trent Krauel said Bill 51 provided a mechanism for landlords to recover capital expenditures and preserve their investment. "It was far from profitable, but many landlords have committed a tremendous amount in capital expenditures that took countless buildings from the verge of slums back to a state that the tenants are proud to live in." A landlord in London agreed that the pass-through in Bill 51 "seemed to work. Capital expenditure rip-offs are not typical."

One Richmond Hill landlord said profit-and-loss statements should not be taken into account when capital costs are passed through. Instead, he suggested setting standard rates for capital repairs, and allowing landlords the amortized costs. "It would make

rent, yet we're being asked to pay for repairs. He didn't even need to borrow money to make $1.5 million in recent repairs," he said. "There will be many economic evictions in our building. It's criminal that seniors should be asked to contribute."

Many landlords said capital expenditures should be financed by a more generous guideline. "A reserve fund is fine for new buildings, but older buildings need many repairs," said a landlord organizer in Welland. A large landlord in Toronto suggested "there are no options other than a straight pass-through system with no limits. Otherwise, the system would be too complex." He said condominium reserve funds only work because special levies can be assessed for capital projects.

Another Toronto landlord said there should be no question that capital costs will be passed through to tenants if a landlord is required to make repairs to conform with municipal bylaws or standards. "Tenants should not live in a well-maintained building and not expect to pay for it," she added. But one Scarborough tenant said "there's no way tenants should pay for capital expenditures. My landlord is making a 50% profit, grossing $368,000 against $160,000 expenses. I've already paid for capital expenditures for the next 30 years. Landlords had better find the money."

The definition of necessary capital was a particular concern for the owner of a mobile home park in Ottawa, who questioned whether a new requirement to install municipal sewers would be eligible for pass-through under the permanent legislation. He predicted that tenants would not approve a capital project of this sort, even if he could demonstrate environmental benefits. Another Ottawa landlord expressed concern that short-term tenants would not approve capital expenditures to promote the long-term integrity of a building, and asked whether landlords would be held responsible for violating municipal standards after tenants had vetoed proposed repairs. Despite this overall view of the rental market, she also questioned whether future tenants would then want to live "in an old, rickety shack." It was explained that tenant approval provisions in the Consultation Paper would not apply to necessary capital expenditures. Another presenter in Ottawa said landlords' property rights would be violated if tenants were given any say in capital expenditures.

An Islington landlord called tenant approval "a licence to extort". But a participant from Hanover said tenants must be able to veto unnecessary capital expenditures. He and his neighbours, most of them seniors, "had to move out of the units while new carpeting was installed, carpeting we didn't want and didn't need." Three of the residents ended up in the hospital over the ordeal because "they didn't want to be disturbed," he said. A small landlord in Toronto

said necessary and unnecessary capital costs should be separated, noting that a friend had recently had to pay for the replacement of a fridge that was in excellent condition. "It was unfair, and if legislation is trying to correct this, it has a point," even though the system might be difficult to administer. An access-to-housing advocate speaking in Oshawa recalled the case of a landlord who used his VISA account to purchase several new appliances, based on a seven-year payback at 22% per annum. He said it was likely that the landlord had borrowed money at a lower rate to clear his credit card, but the purchase was still being passed through at 22%. He also noted that the trade-in value of old appliances should be counted against the purchase price of replacement units.

A tenant representative in North York said the cost of appliances should be amortized over five years and then removed from the rent. "Landlords are in the business of renting space, not appliances," he said.

A co-op organizer in Sudbury said tenant participation and approval may be comparable to the model for worker-management consultation enshrined in health and safety legislation. "The committees actually work, and the common goals are often achieved," he said. By analogy, "no one has any stake in having the building fall down." In co-ops, "the people who pay the freight and live with the consequences of decisions are in fact the first experts on rent control in this province."

A Hamilton anti-poverty activist said tenancy should be seen as a lease-to-own arrangement after a tenant has occupied a unit for a year, with provisions to separate the investment when the tenant moves. Within this framework, she said both parties should contribute to a reserve fund to cover the cost of major repairs.

Landlords in several communities said new appliances, possibly excluding microwave ovens, should be seen as necessary capital. They predicted that tenant approval of a replacement plan would cut into possible savings from bulk purchases of refrigerators and stoves, so that long-term tenants would ultimately pay a higher rent increase because of their neighbours' veto. Delays in replacing old appliances would also affect energy efficiency, since newer units use 30 to 40% less electricity, and would lead to higher costs for service calls. In at least one community, tenants said the $300 stoves that landlords install should be covered out of the 1% guideline provision for minor capital items. Even if the expenditure qualifies for a pass-through, it should not be compounded year after year, since an appliance is a one-time purchase.

Tenant Howard Brown of the Beyond the Living Room Committee said capital expenditures often result from deficient maintenance, and supported the establishment of building reserve funds based on 1% of rents. "If tenants pay, they should have a say, and maybe a limited equity in the building," he said.

One presenter, who manages 2,000 rental units in Barrie, said tenants should have a say in unnecessary renovations, and said a reserve fund for capital expenditures could work. A Mississauga landlord said tenants should be consulted about non-structural repairs, and in the replacement or repair of items that have not reached the end of their life expectancy, while a landlord organizer from Welland said tenants should be allowed to suggest and pay for building improvements. He noted that his tenants had asked for upgraded wiring to run air conditioners, but Bill 4 halted the work.

John Gleason of the London Property Management Association said stipulations of tenant approval will "place both landlords and tenants in an adversarial position on issues that are dictated by economics, resolved by engineering, but will be fought on emotion." He said most tenants "do not understand how to operate multi-residential buildings." Necessary capital expenditures are different from luxury ones, and tenants should not have veto powers over both, he added.

Windsor lawyer Dewar Laing said pass-throughs for capital costs cannot be rolled back over time because expenditures are amortized, and must be repeated by the time they are paid off. Suggesting, as an example, that a roof might have to be replaced every 15 years, he stated that capital cost charges do not represent money in a landlord's pocket. In subsequent questioning, Mr. Laing maintained the position that there could be no roll-back, while indicating that the second roof should still be grounds for another rent increase.

On a similar point, a Kingston tenant said landlords should try to add major repairs, like roof replacement, to their long-term mortgages, on the basis that it would be more practical to build in a semi-permanent rent increase of 1.25% or 1.5% than to ensure that a 3.5% hike is rolled back after 10 years. He suggested that few lenders would balk at adding $50,000 to a $2 or $3 million mortgage. Guy Caverson of Peat, Marwick, Thorne Chartered Accountants in Sudbury said longer amortization periods would force landlords to cut costs elsewhere.

An Ottawa-area realtor insisted that "capital expenditure costs must be passed through, and a definition of 'necessary' must be realistic to avoid possible abuses." He said this is particularly important because the province will not have the resources to fund the

renovation work that will be required over the next 10 years: "It is the property owners of Ontario that are going to have to bear the burden of this deterioration." A Dundas landlord said reports of unnecessary capital expenditures are greatly exaggerated. "Somewhere in Ontario is a building with a marble lobby," he said. "Where and why, I don't know."

On the other hand, an Amherstburg tenant said capital expenditures should be kept out of the formula for annual rent increases. "There's no way the government can police whether the capital investment is being made, whether those buildings are being kept up," she said. She noted that, in her building, "the capital investment has been two refrigerators" since a new landlord took over in 1987. In other developments, "they went ahead and landscaped and put in new fixtures that were not needed, just in order to get more money." A Barrie tenant said most capital costs should not be passed through to tenants because landlords will recoup the costs when the building is sold. "If a new roof cost $10,000, why should we have to pay for it at all?" she asked. If the cost of a major capital expenditure cannot be recovered in one year and the balance is carried forward, she said tenants should not be expected to pay more than 5% above the guideline. After the cost is recovered, the rent should be reduced accordingly, she concluded.

An affordable housing advocate from York Region said she found it "curious that setting aside a building reserve fund wouldn't be a standard business practice for landlords." She said a reserve fund should be mandatory for new buildings, and urged the Ministry to work with Revenue Canada to make building reserve funds exempt from federal tax.

A tenant in North Bay said she wanted to be sympathetic to landlords, but identified building reserve funds as a basic requirement. "We should recognize that landlords are businessmen," she said. "They have their properties to make income. Businesses recognize that they have to keep money to buy new stock, or to replace equipment that becomes outdated. Are not landlords supposed to do the same thing? They can't expect that everything they get in goes into their pocket to spend as they please. If they're prudent businessmen, they've already thought of it." An Etobicoke tenant stated that forcing landlords to finance repairs might cause some bankruptcies, but added that "proponents of a free enterprise system should welcome the chance to clear out the deadwood from the market. Social security and welfare will take care of those landlords." A tenant organizer in Hamilton said all three capital expenditure options in the Green Paper involve some form of pass-through, "and as such have been rejected by

the Coalition as unworkable, unfair, and contrary to the underlying policy principles of the Green Paper."

A landlord from Shallow Lake said there should be no need for provincial support of capital work, noting that "we have our own reserve fund. You have to plan ahead in any business. Why can't other landlords do the same?" In the same session, an Owen Sound landlord agreed that landlords should be responsible for capital repairs. "We've also had a reserve fund, and we fix (the building) ourselves," he said. A tenant organizer in Toronto said landlords should pay for capital costs out of the accumulated depreciation saved from income tax. "Depreciation is allowed because it is assumed the structure will need replacement," he said.

A tenant organizer in Niagara Falls said the province should provide partial support for building reserve funds. Additional funds would come from a 0.5% guideline increase, combined with a 0.5% levy on landlords. The funds should be used only for necessary improvements, he said. "The emphasis should be on upgrading housing to its original condition." He added that the last month's rent collected by landlords "is a pool of money that could be put into a building fund," and quickly calculated a total of $86,000 for his building alone. In North Bay, however, landlords said they were using last month's rent deposits to cover ongoing operating costs. A Kingston housing activist said the government should reconsider allowing landlords to charge last month's rent, rather than institutionalizing a practice that makes it impossible for many people to find housing. She noted a discrepancy between landlords' right to demand last month's rent and the Ministry of Community and Social Services' unwillingness to cover the payment for social assistance recipients.

A Thornhill tenant said tenants should not have to pay the costs of capital repairs resulting from construction mistakes, in her case the excavation necessary to remove water from the basement and repair the foundation. "The building was built on a brook," she explained, "and the problem will never be corrected." The participant, a former real estate broker, said most smaller rental buildings are bought as a long-term investment, not for immediate profit. "A landlord should know when he buys it that he has to keep it up," she added. If a potential landlord cannot afford to maintain the building, "he should get into another business."

A participant from Niagara Falls said tenants "should not be required to pay the total bill for previous landlords' neglect." A tenant in the same community agreed that "tenants shouldn't be responsible for maintenance and capital expenditures. Tenants will

not benefit from the sale. Landlords should be able to maintain buildings at their own expense." A community legal worker from Welland said it is unrealistic for tenants to live in good housing and not pay for it, but "we shouldn't have to pay for the same roof 20 times over."

A Kingston housing advocate said she knows of too many tenants "who live in substandard conditions, pay market rents, and are struggling to have landlords conduct even the most minimal repairs." She said rent penalties would help speed up maintenance, and provide compensation to tenants living in substandard housing.

A property manager in Thunder Bay said a $150,000 maintenance project on a parking garage in a larger building can be amortized at a cost of $6.00 per tenant per month. In Oshawa, another property manager said she had never seen a new roof that required an increase of more than 3%.

A Sarnia landlord noted that he had sought and received tenant approval for a series of energy efficiency improvements, based on a 20%/$80 per month rent increase that was ultimately held up by Bill 4. The 50% increases that have been reported are shameful, he said, but in this case "we did something right. There's a certain pride in that too, and I hope you will make sure that people who want to do something right for the tenants and for society can still continue to do so." Later in the session, a Sarnia property manager referred to Ontario Hydro's energy conservation initiatives, and recommended some form of financial incentive to cover landlords' capital costs related to energy-efficient appliances and lighting systems.

In North York, one property manager noted that he could cut energy costs in one building by 40% if the cost of new windows could be passed through in the rent. "Tenants are paying for the heat, and they would save money," he said. He noted that the Low-Rise Rehabilitation Program does not cover the cost of replacing leaky windows and doors. A Sault Ste. Marie landlord said his company is already undertaking energy efficiency expenditures involving short payback periods, but suggested that a pass-through would clear the way for more extensive work "so that you won't need the nuclear generating stations". The resulting drop in energy use would represent a saving to tenants and the landlord, with the landlord's share forming the basis for a five-year payback on the investment. His only caveat was that the energy saving should not be taken as a reason to hold down future rent increases: "Let the landlord make something on it," he urged.

Tenants in Kitchener raised another concern related to energy efficiency. Individual metering of electricity is considered an effective method of reducing consumption, and is now a part of Ontario Hydro's energy conservation repertoire. But a rent review consultant from Guelph noted that the cost to tenants "is much greater than the saving to the landlord," since landlords receive a bulk rate as institutional power users. Rent review calculations already factor in the landlord's saving when tenants take on responsibility for hydro, but the participant said the extra cost to tenants must also be reflected.

One landlord in Ottawa said the structure of the current rent review process encourages building operators to postpone capital work as long as possible, then apply for everything at once. "Going to rent review is not fun, so you wait until you finally have something major, like the garage or the roof, and then see what you can look at at the same time." Given the aging of Ontario's rental stock, he said, "I think you're seeing the tip of the iceberg of major work that we just can't do within the rents. You're putting them on hold for a little longer, but if you're concerned about the viability of Ontario's housing stock you're going to have to address them." He said combined repairs can easily add up to $24,000 per unit, which translates into a monthly increase of $280. Other landlords said it makes sense to remodel an entire building all at once. A Sault Ste. Marie legal worker said the proportion of landlords seeking large pass-throughs will increase as the housing stock continues to age.

One small landlord and city administrator said the rental stock "is being closed off at both ends," because new buildings are not being built and older units are not being rehabilitated. "That has enormous implications for the government," he said, "because government will then have to replace all that stock with new subsidized units." There was some discussion of extending or modifying the Low Rise Rehabilitation Program to cover apartment buildings that could be brought back into circulation if renovation funds were available.

Some tenants, on the other hand, have indicated that sudden large rent increases are their biggest fear, and questioned whether capital costs need to be passed on. "Any corporation always has an account for the future cost of replacements," said a tenant council representative from Amherstburg. "That's bottom-line business," agreed a Windsor tenant in the same session. A Windsor legal worker suggested that some landlords put the 1% for capital improvements in their pockets or made some other investments," rather than using it to maintain rental properties. She said landlords should be able to file for rent increases to cover capital expenditures, "but only if it is in addition to what he should have kept on the side."

One landlord said technical audits of rental buildings would promote long-term planning and help level out the peaks and valleys in the cost of capital upgrading. "Now, most landlords wait until something breaks. If it's not repairable, you're encouraged to bunch (capital items) because of the 1% deductible feature."

A landlord in Ottawa predicted that no reasonable guideline would adequately cover the cost of repairs, so that the affordability needs of the bottom third of the market would have to be addressed through non-profit and public housing. "We all agree that something has to be done about that," he said, but "affordability will continue to be a problem." Concern was also expressed that the permanent legislation will affect all rental units, when 70% of tenants do not have an affordability problem. Several participants warned that rent controls would lead to the type of inner-city problems that exist in major U.S. cities like New York, although there was some suggestion in the course of the hearings that the situation in New York goes far beyond a decision on rent controls.

Some landlords asked whether the provincial Low Rise Rehabilitation Program could be extended to help small operators catch up with needed capital improvements. A tenant organizer in Windsor made a similar suggestion, asking whether the program could provide interest rate relief to landlords who can demonstrate the need for support. The exception, according to Joe Krall of the Federation of Windsor-Essex County Tenants' Association, is that "the guy who can't prove that he made even a semblance of a reasonable investment doesn't deserve the extra capital."

Capital Expenditures Completed Before Rent Control and Transition to Permanent Legislation

Landlords across the province expressed concern and anger about expenditures that had been undertaken but affected by Bill 4. Barbara Nease, a small landlord in Windsor, stated that "we are people who have tried to follow the letter of the rent review process and do everything correctly. We didn't hire consultants, we did everything ourselves, and we feel that we're suffering because we abided by the correct process at the time." She said rent control discriminates against small landlords, because larger operators "have ways of getting around the rules." A New Liskeard landlord said her first rent increase in 16 or 17 years was held up by Bill 4, after she had already committed to major repairs. "There's nothing being done," she said. "The tenants don't know if they'll have to pay the $75 increase I asked for," and the administrative delay will make it difficult for

families with children to cover the backlog in rent. "It's a hardship for me, and it's going to be a hardship for them, too."

John Gleason of the London Property Management Association summed up the view of many participants: "It is essential that the new legislation allow for recovery of the expenses caught by Bill 4." Guy Caverson of Peat, Marwick, Thorne Chartered Accountants in Sudbury said the landlords he works with "can live with the moratorium, as long as it's not permanent."

Some small operators said it would be difficult to manage their cash flow until permanent rent controls are finalized. "There's millions of dollars of work that's waiting to be done," added a senior executive of a major landlord in Ottawa. "I'm not suggesting that buildings will fall down. But if you wait one or two more years, it's going to be much more expensive, and it means that hundreds of workers are unemployed."

One landlord emphasized that capital expenditure provisions in the permanent legislation should not be retroactive for landlords and trades, to prevent "economic disaster".

A tenant organizer in Niagara Falls stated that "we welcome the Minister's efforts to improve the RRRA, in particular the enforcement components of the Act," adding that his group "would be remiss if we did not make you aware of our whole-hearted support of Bill 4." A legal worker in Etobicoke said landlords' vehement objections to Bill 4 demonstrate that something is wrong with the present system. "Why is it that landlords can refuse to do capital repairs," he asked, "when tenants cannot refuse to pay rent?"

Bill Armstrong of the Tenants' Protective Association in London suggested a temporary cap on capital expenditures as an interim measure until the new legislation is enacted. "I don't want to see another backlog," he added.

A construction industry representative said the transition phase should be used to clarify the government's intentions, "for reasons of public safety and to minimize job loss." The work of concrete restorers "is necessary work that must be carried out in the interest of public safety," he said. "If it is not, garages will deteriorate and collapse." He urged the Ministry to make a public statement as soon as possible about capital expenditures that were caught by Bill 4. "We don't want to lose the spring season," he stressed.

5. Maintenance

A number of tenant representatives drew a link between annual rent increases and the quality of maintenance. They spoke of buildings in their communities where annual increases had continued while fences were falling down and routine repairs were never carried out.

An Ottawa-area tenant organization questioned whether all tenants are aware that part of the guideline increase under RRRA accounts for rising maintenance costs. "The landlords have been paid for that consistently, automatically, and they don't have any reason not to be providing basic maintenance. One of the things that the Ministry and the Minister have to do while Bill 4 is in place as a breathing space is to put out some messages about what is already in the rent: The 2% build-up is money for maintenance, and landlords are going to have to get realistic and realize they can't take a free ride on maintenance anymore." Joe Krall, Acting Chair of the Federation of Windsor-Essex County Tenants' Associations, argued that current guidelines allow for maintenance costs unless there is a gap in a landlord's planning.

Another tenant organizer in Windsor agreed that the 1% annual increase for maintenance costs under the Building Operating Cost Index (BOCI) should be discontinued once a separate fund for maintenance and/or capital spending is established.

An Ottawa participant noted that maintenance is one of the chief concerns of tenants across the province. "We're living in unsafe conditions, and if you don't believe that you can take a walk around some of the buildings in this city on an icy day." In some buildings, he said, snow and ice are allowed to build up until a potentially hazardous situation occurs. This concern is particularly serious for seniors, some of whom can only reach their units by climbing outdoor stairways with no handrails.

An Ottawa landlord noted that "maintenance costs will be capital costs if they're ignored," and insisted that maintenance expenditures must be passed through to tenants. A property manager from Sarnia said maintenance can prevent some capital expenses, but identified energy management and deterioration due to acid rain as just two of the long-term areas that can't be anticipated or funded through a routine maintenance plan.

Windsor landlord Shelly Hind said she has been unable to undertake the routine maintenance work that her property requires. "I don't want to be a slumlord, but I'm legislated into this by the

complexity of government," she said. "Not all landlords are bad, but the legislation affects all of us, small and large."

But one Ottawa presenter, who identified himself as both a tenant and a former landlord, said he had faced an 18 or 19% rent increase due to proposed renovations before Bill 4 was introduced. "It's as if you went to a grocery store and bought an apple for 25¢, then came back the next day and the apple was $25," he said. "Although I could afford that, and would in some cases have gladly paid it, the problem is that it was helping with a renovation that would probably be paid off in a period of two years. The way it was set up, if I continued to live there, I would be paying for that renovation for the rest of my life, and I think there's something wrong with that."

A Kingston tenant presented detailed figures to support his argument that there is little excuse for landlords to pass through routine maintenance costs. Maintenance and operating costs should represent about 40% of the rent, he said, so if a landlord is in the second year of a five-year mortgage a 5% rent increase represents at least a 10% increase in the funds available for maintenance. "The only thing going up is his maintenance and operation," he said. "This is a point that's never stated, but he's getting at least double the cost of living because his mortgage isn't going up every year...They build up a positive cash flow, or ought to, and if their mortgage is a little bit more after five years they can probably accommodate themselves. But this is a point that is rarely made: When they get a raise of 5%, their whole expenditure is not increasing by that amount."

A Kingston housing advocate said the province should consider loan guarantees to reduce the cost of repairs, combined with strict follow-up to make sure the work is actually completed.

Several presenters pointed out the link between ongoing maintenance and major capital work. "When a landlord does not maintain his property, lots of little things go on until they're big things," said one North Bay tenant. "If a screen door catch doesn't quite latch, it's a simple little thing...Eventually a storm whips the door off its hinges, so we need a new door. That's really bad management. How can the landlord plead hardship? He's part of the problem himself, because he won't look after things when they're little. In some properties it's crisis management," and tenants are told not to expect efficient repairs because, after all, they're only renting.

One municipal building officer said a minimum annual expenditure on maintenance should be mandated. "There should be a penalty for

anyone that doesn't do that," he said, "and any attempts to increase their rents should be voided."

A legal worker in Sault Ste. Marie said maintenance and capital expenditure problems should be addressed by emphasizing landlords' responsibility for preventive maintenance. "In a lot of cases, you can prolong the life of the components and the structure," she said. "If you fix it when it first starts to leak, you fix the roof. If you do it in six months, you have a much larger capital expenditure," involving insulation, ceilings, and inside walls. Landlords should have to provide tangible evidence of preventive maintenance efforts when they apply for pass-throughs on unavoidable capital expenses, she added.

A participant in the Ottawa hearings said the terms and conditions set down by the residential standards board are vague, and based on ambiguous jurisdiction. He stated that rent increases have been permitted in spite of an accumulation of municipal orders.

6. Rent Reduction

Challenges to Guideline Increases and Illegal Rents

A community legal worker in Mississauga expressed concern that tenants are often unaware of the process for recovering overpayments for illegal rents. Because some tenants fear harassment if they file for reimbursement while still living in their units, they wait until they are ready to move before filing, by which time the overpayment often exceeds $3,000. Under current regulations, amounts over a ceiling of $3,000 must be retrieved in court. He suggested raising the ceiling to $10,000.

Tenants are often not aware of illegal rents because landlords do not inform new tenants of the maximum rent on their units, the participant noted. This practice continues, despite regulation, because "there are no teeth, no penalties" to enforce it. "We need a section saying failure to provide notice of maximum rents will prevent an increase above the guideline." He suggested the Ministry prepare a pamphlet on illegal rents for distribution to tenants.

A housing support worker from Newmarket said some of her clients are transient men who do not read, and are vulnerable to illegal rents. She expressed concern that these individuals have little chance of learning about and using any system of recovering illegal rents.

A tenant in North Bay called for stiffer penalties for illegal rent increases, noting that "the discrimination in this town is really bad. Recalling her own experience of receiving an eviction notice as soon as she questioned her rent, she noted that "I shouldn't have to wait for a judge to decide in his favour or in my favour. There should be a stiffer penalty, because it's not fair."

Another North Bay tenant agreed that "up here, they're frightened. They say, 'you go ahead, I like what you're doing,' but they don't want to be a part of it. They're afraid that anything they do to exercise their rights will come back on them. If they get an illegal rent increase, they'll go ahead and pay it if they can find the money." Even though tenants can report anonymously, there is a concern that landlords will know who complained. The same applies to guideline increases that are applied in spite of outstanding maintenance problems.

A Barrie tenant advocate called the Landlord and Tenant Act's Section 96 "a total failure," and said the solution is not to have

tenants go to court to enforce repairs, adding that the Standards Board is "not effective in rural areas."

A number of presenters also expressed concern about the intimidation that tenants sometimes face when they decide to challenge a rent increase. "It's often easier for a tenant to move out," said a housing support worker in St. Catharines. "There are too many hoops to jump through. Tenants need support, because they often face income discrimination." Often, he noted, the requirement for the last month's rent "means tenants are denied housing".

One Scarborough tenant said tenants need protection from harassment. And several tenants in Owen Sound expressed concern about going through a rent review process in a small town. "People may feel intimidated about complaining," said one participant, "because they don't want any bad blood." Another tenant said he wouldn't have attended the meeting if landlords had been present. Another speaker said tenants may decide not to proceed with rent complaints because they can't afford to take time off work to attend the hearings. A Whitby tenant said there should be penalties for landlords who enter into "sweetheart deals" with some tenants that will be detrimental to other households.

A realtor in Hamilton said it would be impractical to roll back illegal rents in smaller buildings, because the vast majority of rents would be deemed illegal. "If you start rolling those back you're going to bankrupt everybody," he said.

Rent Penalties

One tenant organizer in Ottawa said it is not sufficient to hold back the guideline increase until repairs are done, and called for penalties that lead to actual rent reductions. A Thornhill tenant said her landlord was granted two successive increases of 18% and 22%, without complying with deadlines for work orders. "I tried for five days to get through to an inspector," she recalled, "only to be told that if the building was over 20 years old, they won't look at it."

A North Bay tenant noted an important difference in the treatment of rental housing and other goods and services. "If I buy my husband a shirt in a package, get it home, and find one sleeve missing, I can get it put right immediately. If I rent a house, I expect it to have a roof that doesn't leak, so that water won't come in my basement walls." The difference, she said, is that "I still have to go on paying 100% of my rent while I suffer these inconveniences." Some tenants noted that their personal belongings had been damaged beyond repair or salvage, while landlords delayed basic

maintenance.

A community legal worker in Sault Ste. Marie said rent penalties can have a more positive impact on maintenance and standards compliance than the penalties themselves. Residential Standards Board statistics show that two-thirds of landlords comply with work orders when they first receive notice of a penalty, and another two-thirds comply when a report is sent to the Minister, but the remaining 10 to 15% are unlikely to react when the penalty is actually imposed. Another lawyer in the same session said recent court actions under Section 96 of the Landlord and Tenant Act have demonstrated the impact that test cases can have in small communities. He said his group is prosecuting, "not because we want to get any particular landlord, but just to make it known to tenants that there is something that can be done. If the municipalities were more pro-active in enforcing their own bylaws, it would have some effect."

7. Rent Information

The importance of establishing an effective rent registry with adequate enforcement was a key topic for Ottawa tenants. There are many landlords that have never registered their rents because they have never applied for rent review. One owner in Vanier recently asked $485 per month for a unit that had previously rented for $325. "Without a rent registry," noted one tenant organizer, "you would not be able to determine that. You would have no proof."

Since rents registered as of 1985 were never verified by tenants, a community legal worker in Mississauga said the rent registry is essentially "an unofficial listing of what the landlords said." He suggested that landlords register all rents for the current year, instead of going back to 1985, and stressed that tenants must agree with the rents filed.

There is also a need to build simplicity into the rent registry system. An Ottawa legal worker noted that many of her clients bring a Grade 9 education or less to the task of calculating a 1983 rent through to the present day. "I would like to see the Ministry and its computers figure it out, and tell the tenants what the rent should be today," she said.

A Kingston housing advocate said 35.6% of tenants in her community live in buildings with six or less units. The buildings are not registered, and are often occupied by the most vulnerable tenants. "We're often confronted with a rent that we know intuitively is too high, but we have difficulty proving it," she said. Extensive research is often required to track past tenants, and the process often ends in failure.

An Amherstburg tenant said her efforts to work with her landlord would be easier if legislation provided for the identification of shareholders in numbered companies. "You have to know who you're dealing with," she said. "I would like to have a meeting with them next fall, and I would like to be able to send a letter to each and every investor." A tenant from Windsor said any change in a building's financial status or business structure should be disclosed to the rent registry, to help tenants and government officials determine whether a proposed increase is justified. A Mississauga tenant was also frustrated at not being able to find out who his landlord was.

A landlord organizer in Toronto said the rent registry "has had all kinds of problems since day one." Although all registered buildings were supposed to be notified, "the system bogged down after

13% of the notifications were sent out, and it never resumed." He said he was surprised the new legislation proposed registering an additional 125,000 landlords, when registering the first 11,000 had not been accomplished: "The mess will be unbelievable." The participant suggested the rent registry send out a simple form, to be signed by both the landlord and tenant, which would register the current rent, the date of the last increase, and other relevant information. After a 60-day correction period, the information would be accepted as valid. A tenant organizer speaking in Oshawa said any past errors in defining maximum rents must be addressed by extending the appeal period beyond two years. Backlogs will be inevitable, he said, but "we're going to make it fair once and for all."

A Thunder Bay property manager said the failure to date in getting the rent registry in place "isn't a landlord problem, it's a government problem." She suggested that implementation of the registry would be sufficient to solve the problems that have come up with the current rent review system. Another landlord in the same session asked whether the province could establish professional development courses to explain rent review to landlords, and provide an alternative to consultants who charge $200 for a booklet explaining the Act.

A participant in North York said tenants should not have to pay fees for rent review information in government computer files. "The costs involved could be detrimental," he said. A Thornhill tenant said rent review offices should be open at least one evening per week and Saturday morning for the convenience of working tenants.

A tenant advocate in Hamilton said every building in the rent registry should be given a computerized reference number, which could then be used to coordinate information on rents, inspections, maintenance and safety standards, and health inspections. "It should be indelibly printed in the Act that the landlord cannot dispose of the building if there are any outstanding work orders against it," he said. He added that the reference number should be available to prospective buyers as well as the tenants' association. The availability of a one-stop database would make it easy to post maximum unit rents in apartment building lobbies each year. Outstanding work orders should also be posted until they are cleared. "The computer will be of invaluable aid," he said. "Anyone with a half-active brain could put together a program, and anyone could have access to it with a touch of a key. I'm sure it would clear up a lot of things that have been bogged down in unbelievable paperwork." A tenant organizer speaking in Oshawa said rents should be documented in the same way as land titles, with a judicial officer affirming that the information is correct.

8. Decision-Making and Administration

Dispute Resolution System

One North York tenant called for "a more pro-active system, one that makes landlords accountable. Landlords, not tenants, must bear the burden of proof." She identified bylaw compliance as a major problem, citing the example of a local provision requiring installation of smoke detectors.

Another tenant in the same session stressed careful review of documents. "Landlords should be required, at the initial stage, to supply two copies certified under oath – one for tenants and one for rent review." At the Hearings Board, the original copy should be supplied, and the Board should have the power to impound invoices if necessary. The participant expressed concern that records are sometimes falsified, noting that he was currently investigating a situation where there appeared to have been a significant overpayment on contracted work. He said fraudulent landlords should be charged immediately, and landlords convicted of fraud should have their rent orders removed.

Fines to landlords should not be passed on to tenants, the participant noted. A Scarborough tenant said the government should set up a legal fund to help tenants take landlords to court.

Tenants in Windsor supported a two-level decision-making process that would allow them to appeal unfavourable decisions. Joe Krall of the Federation of Windsor-Essex County Tenants' Associations said many tenants ignore the initial notice of a proposed rent increase, and only become involved in the process after an administrator's decision goes against them. At the same time, there was agreement that the province should not retain a $42 million decision-making system: one participant said the money should go into subsidized housing; another said some of it should be shared with advisory groups and tenants' organizations.

A London tenant organizer said the current rent control process "is biased in favour of any landlord. The opportunity to confront a landlord was removed by legislation, giving (landlords) two written 'kicks at the cat' to the tenants' one." He suggested written pleas by both parties, followed by verbal hearing before a decision is made. But a Mississauga legal worker said a one-hearing system would make the process faster and easier for tenants to understand. "Tenants have no sense of how a decision is made. Tenants are totally disenfranchised under the present system," he said.

A tenant representative in Hamilton said detailed challenges to landlords' applications had been "rendered totally void and insignificant" by rent review administrators. He called for an end to the practice of providing detailed responses to landlords' submissions, while only barely acknowledging that tenants' had presented their own documentation. Hamilton tenants said a system of pre-hearing mediation should be available at the request of either tenants or the landlord. "It's to the advantage of both parties to meet and discuss and reach a basis of understanding," said one participant. Two other speakers in the Hamilton session said adjudication procedures could be cleared more efficiently if incomplete, inaccurate or delayed submissions were immediately dismissed, and if first-level hearings were bound by the decisions of second-level appeal tribunals. The provisions of the Statutory Practices and Procedures Act should be followed to avoid a multiplicity of proceedings. She said the "appalling justifications and reasons for decisions that are provided under the current system must be improved."

A building manager in Hamilton suggested that proceedings could become tense if written applications are replaced by a hearing process. "You've raised the consciousness. Now you're putting them in a room together. Please convey this to the Minister, not only for the landlords and the tenants, but also for the sake of Ministry staff." A Hamilton rent review consultant described hearings as "a forum for emotional allegations rather than finding facts," and suggested that written applications are a more "reasonable procedure".

Bill Armstrong of the London Tenants' Protective Association said it sometimes takes Rent Review up to three years to solve issues, and suggested forming a rent control advisory committee with regional representation that reflects the average tenant.

A London housing worker said the process of giving landlords work orders should be accelerated. A legal worker in the same session called for increased fines and tougher enforcement methods. Forcing tenants to go to court under the LTA's Section 96 should be "strongly reconsidered," she added.

Sandy Bell of the London and Labour Council said her organization "stringently opposes" appeal fees meant to discourage frivolous claims. "There is not room for this in a democratic society." Instead, the Council supports a streamlining of the current system, in which only one member hears each case. This would eliminate "juggling the schedules of three members to be present at a hearing, thereby saving time and money," she said.

Landlords in many communities expressed dismay and frustration with delays in adjudicating proposed rent increases, and with the complexity of the process. "Apart from it being complex, there are inconsistencies that have to be corrected," said one North Bay landlord. Another northern Ontario landlord recalled a submission that took about 15 months to resolve, and predicted the proposals in the Green Paper would make the backlog even worse: "If you think your work load is heavy now, you're going to be even further behind with the new changes." Tenants at the Oshawa meeting placed similar emphasis on the long delays in processing rent review claims.

Assistance to Tenants and Landlords

Some tenant associations discussed the need for resources for education and outreach. Joe Krall of the Federation of Windsor-Essex County Tenants' Associations said increased funding would make it much easier for tenant organizations to distribute information to their members. As well, an Ottawa tenant organizer said groups should have standing to ask that an entire building have its rents reviewed downward because of the standard of maintenance or management. A North Bay tenant also underscored the importance of "giving us tenants a little bit more support so that we can help to educate other tenants.

A legal worker in Sault Ste. Marie said access to information is a key issue in northern towns, and suggested two solutions: establishment of small community offices with computer links to larger centres, and identification of regular information days when rent review staff come to town. "People in small communities know that the Veterans' Affairs people are here on the third Tuesday in the month," she noted, "so when they have a problem they make a point of going in at that time."

A co-op organizer in Sudbury said strong tenant associations can play an important part in ensuring effective enforcement. "There's obviously a naked power imbalance, so it's a matter of empowerment for the tenant," he said. A legal worker in the same community said tenant associations can also take some of the work load away from Ministry offices and tribunals. "Having tenants empowered through an effective association is likely to reduce the amount of involvement from these offices." In Kitchener, a welfare rights advocate noted that tenant organizations have trouble covering the cost of meetings and communication. "Landlords, on the other hand, can afford to have an organization and keep themselves informed."

A rent review consultant from Guelph noted that resources for tenants in her region are extremely limited. "We have nothing in the

southwest," she said. "The advisory funding is desperately needed out here." A legal worker in Waterloo said eligibility requirements limit the work he can do for many tenant groups. "I give them my little talk, I give them some clinic materials, I wish them good luck, and then I see them six months later when they get slaughtered," he said. "When I read the submissions, I get a sense of helplessness."

One property manager in Kingston underscored the importance of tenant education. "I get calls all the time from tenants who are afraid because they want something fixed," he said.

A Scarborough tenant said funds should be made available to provide better training for Rent Review staff. "It's difficult to get straight answers from the people who answer the phones," he said. He added that tenants must be notified when landlords resubmit an application for a rent increase. A community legal worker in Welland said she had had great success with training programs to improve the relationship between landlords and tenants. "There is often no need to be confrontational," she stressed. Landlords in Owen Sound noted that the local rent review office had organized a successful series of information sessions on policies and procedures, and recommended extending the format throughout the province. A North Bay tenant said improved information to landlords would be helpful to both landlords and tenants.

One small landlord and city administrator suggested that the Ministry of Labour's model of employee and employer advisors could be adapted to tenants and landlords. "You're seen as regulators and enforcers, but there's no service available where the landlord can get advice." He said a landlord advisor could address a wide range of issues, including maintenance management and building economics, in a more hands-on manner than past Ministry of Housing initiatives. Asked whether landlords would be more comfortable receiving independent advice from their own associations, he said many landlords do not belong to groups. A rental property manager in Sarnia said the program should be administered by the Ministry but set up through industry to help smaller and larger landlords contact each other.

A former landlord, who also addressed the hearings in his capacity as a tenant, said landlords need easier access to information on provincial regulations. He said a monthly newsletter might be one way of addressing this issue.

Another presenter noted that it is often difficult for tenants to get current and reliable information when they are preparing rent review submissions. In some cases, neighbours in the same building have received different answers to the same question posed to a local

rent review office. A tenant in North Bay said rent notices should indicate the basis for the proposed increase, and be accompanied by a simple explanation of the recourse available to tenants. "There are things in place," she said, "but tenants don't always know what they can do to protect themselves."

The rent review system must also be made more accessible to tenants, particularly those with low literacy skills. A presenter in Windsor pointed out that most tenants simply accept guideline increases until they can no longer afford to pay their rent; only then do they realize that they could have challenged their annual increases, if only they had understood the notices and forms. A tenant in North Bay noted that a single parent with two or three children "doesn't have the energy to plough through" a complex process.

Improved Enforcement

One concern for tenants is that complaints and appeals can only be pursued by individuals. With serious safety issues like snow removal, according to a community legal worker in Ottawa, it can cost less for a landlord to compensate an injured tenant who knows how to lodge a complaint, rather than paying for proper maintenance. In a similar vein, a property manager who charges a $25 key deposit to 1,000 tenants can well afford to reimburse or pay penalties for the small minority who know their rights. One solution suggested by a community housing caseworker was to initiate pro-active reviews for an entire building as soon as an individual successfully applies to have an illegal rent or key deposit rolled back. This approach would reduce the incentive for violators, while providing more effective service to tenants who do not know their rights. In the area of property standards, a Hamilton participant said tenants and their organizations are effectively blocked from any enforcement role, since the results of unit inspections can only be obtained by going to court.

Many tenants said a system of certification and licencing for landlords would make it easier to enforce rent control regulations and keep records of violators. A participant in London said licencing would shift the onus for enforcing repairs from tenants to landlords. "Most landlords are okay," she said, "but how do we deal with landlords who say they can't do maintenance?" A North Bay tenant said this approach "would make a person feel responsible. A licence is a privilege, and they have to behave properly to retain that privilege."

Howard Brown of the Beyond the Living Room Committee in Toronto also argued that landlords should be licenced. "Separate the good

landlords from the bad," he said, adding that penalties for breaking the terms of a licence could include fines and jail terms. Leslie Robinson of Toronto's Affordable Housing Action Group said there is ample precedent for licencing. "Look at doctors and day care workers," she said.

Some tenants suggested that the province might be better equipped than municipalities to enforce the Rent Control Act and other related legislation. Concern was also expressed that many tenants have no idea of the recourse available to them on property standards issues. "Do people know where to complain?" asked one Thunder Bay participant. "Do they know they have the right to complain?" Some Thunder Bay landlords expressed interest in a registry of tenant complaints concerning property standards in specific buildings, as a way of identifying landlords that aren't living up to their responsibilities.

One municipal official said the local standards board in his community is so slow that it is irrelevant, and said municipal inspectors should be called in as soon as a landlord applies for a rent increase to cover the cost of repairs. Placing responsibility for this activity with municipalities would give local standards officers more control over a situation that would eventually be brought to their attention in any case, would encourage tenants to "clean up their act", and would fit in with existing bylaw enforcement structures. He said municipalities would probably charge an inspection fee to landlords, and an agency fee to the province.

The participant said inspection costs would be similar to the $775 per unit now charged for a full inspection under the Residential Rehabilitation Assistance Program. The cost would be lower in smaller urban areas, although some major items like heating systems and boilers in larger buildings would have to be inspected by outside contractors. After the inspection was completed, the municipality could guarantee that no capital expenditures would be needed on the building for at least ten years, he said. Several presenters said municipalities should receive increased provincial funding to meet their responsibilities for property standard enforcement, and should have the authority to exceed a minimum standard established by the province. Tenants in North Bay and Kingston noted differences in bylaws and enforcement between their own communities and nearby jurisdictions.

Bob Stupar of the 5 Capri Tenants' Association in Islington said municipalities should regularly check buildings to determine if structural repairs are needed. "After the last earthquake, our building sustained visible damage. There must be mandatory checks,"

he said. "Our elevators are not reliable," he added, so that the fire department refuses to come anymore to extract tenants stuck in elevators. Recently, an emergency team responding to a heart-attack victim was forced to use the stairs.

One participant said building-wide inspections should be conducted annually to track violations and breaches of standards, and identify repair work that will be needed in the near future. Inspection records would be maintained by the municipality and the landlord, and would form the basis for a priority list of needed repairs that the landlord would be obligated to undertake over the year. Revenue from fines for non-compliance would be assigned to a building reserve fund. Rent increases would only be available to landlords who had complied with work orders indicating substantial non-compliance with building or safety codes.

One municipal property manager said he and his colleagues are often prevented from inspecting units by the tenants who originally called them in. "If we can't see it, we can't write it up." A housing support worker in the Kingston session said low-income tenants in her community often back off for fear that the landlord will retaliate. Legal aid workers in Kingston and Kitchener noted that enforcement is a particular challenge in student housing, since the school year ends before most complaints are lodged and followed up.

A Toronto tenant advocate was concerned that lack of maintenance has had no effect on rent increase under the RRRA. "Ongoing deliberated neglect is hardly ever established," she said. "The relationship between maintenance and the level of rent increase should be much stronger. If it is below standard, the landlord should not get the guideline." In many municipalities, she added, this problem is aggravated by inadequate bylaw enforcement.

Sandy Bell of the London and District Labour Council said mandatory municipal standards would be the most efficient way of ensuring adequate maintenance of rental units. "The money spent by the municipalities would be money well spent, ensuring that maintenance standards are upheld across the province," she said. A London tenant said a stronger Property Standards Act would help head off situations in which a tenant complaining of a broken screen door is simply told to "take it off". He noted that appliances are not covered under the Act, so that tenants often have to go to court to have them fixed.

An affordable housing advocate in York Region suggested improper maintenance should be handled in the same way that municipalities get rid of noxious weeds: the necessary work is done, and the cost is added to the landlord's tax bill. She said the province must increase

payments to municipalities so the work can be done efficiently and effectively. But one municipal building official said it might be difficult to recover the cost of repairs if a landlord goes bankrupt. "Any municipality is below the mortgages and any other liens on the property," he said. "We're way down the totem pole in terms of collecting our money." In Sault Ste. Marie, a participant said municipalities must also be protected from legal challenges to necessary repairs that they undertake in good faith, as long as the work is clearly needed, the landlord is clearly unwilling or unable to proceed, and the municipality has called tenders on the job.

A Toronto tenant organizer said the government should not police every building, but should set minimum standards and let the municipalities enforce them. Several participants in different communities said municipalities should have the authority to exceed minimum provincial standards, if they wish to do so.

Another tenant in Toronto expressed concern about possible conflict of interest on the part of Standards Board members. Tenants in Hamilton also raised questions about the commitment of the Ministry's Compliance Branch to effective enforcement. One participant said new legislation and increased fines "would only prove to be the paper tigers that they are in the present legislation" without a stronger commitment to investigation and enforcement.

A tenant organizer from Cornwall said property standards are a more serious issue in his community than rents, and suggested that every landlord should be required to demonstrate compliance with local bylaws before receiving a rent increase. "The housing stock is very much deficient, and the present system doesn't work at all in terms of enforcing standards," he said. The local legal clinic can take action in individual cases, but the courts take weeks to respond and local officials have been unwilling to address the problem. With stricter enforcement, he said it would be necessary for the small landlords in his community to pass maintenance costs through to tenants, as an incentive to keep their properties in good shape. One small landlord and city administrator underscored the importance of an effective rental inspection system. "It's not happening now," he said. "It's by exceptions and complaints." A Thunder Bay property manager said her properties are already inspected by the Canada Mortgage and Housing Corporation and her insurance company.

Richard Saliwonczyk of Don't Empty Mimico Apartments (DEMA) in Etobicoke said stronger deterrents are needed to encourage landlords to maintain their properties. "If a landlord is a repeat offender, he should get a prison sentence," he said. A landlord in Owen Sound said

maintenance standards should be enforced by "forcing landlords to pay." He suggested taxing owners who refuse to undertake repairs.

Janet Lisboa of the High Park Tenants' Association in Toronto recommended strong penalties for tenants who sublet their apartments for a profit. "The profiteering tenant should be charged hefty fines on the profit, and the lease should be legally transferred to the occupant," she said.

Etobicoke tenant Bob Stupar said landlords should be required to deal directly with tenant associations in cases of safety and security, only going to the government if the dispute could not be resolved. "The Rent Review Board should have the final say," he said.

Statutory Framework

Sandy Bell of the London and District Labour Council said rent control legislation and the Landlord and Tenant Act should both be brought under the Ministry of Housing. She said the combination would "streamline and speed up the system, and make it much more cost-efficient."

9. Rental Housing Protection

Murray Genraich of the Bayview Village Tenants' Association in Toronto supported continued municipal enforcement of the Rental Housing Protection Act, and extension of the RHPA to smaller municipalities. If units are illegally converted, he said, the landlord should be required to restore the original configuration and reinstate the original tenants.

One city official said municipalities need a more precise definition of the phrase "adversely affect" in the Rental Housing Protection Act.

One tenant organizer noted that Barrie is the only city in his area that is covered by the RHPA. "There is no justification for it," he said. "It is an insult to tenants."

C.K. Cucksey of Chatham, Ont. spoke on behalf of tenants at the Raleigh Estates Mobile Home Park, whose landlord was attempting to convert the property to a co-operative which is not subject to controls. He urged the Ministry to amend applicable legislation to close a loophole that enabled the landlord to proceed on the basis that this was a simple "change of use".

A participant from Waterloo described the case of a 52-unit townhouse development that had been turned into an equity co-op owned by numbered companies – without tenants' knowledge. Despite a series of irregularities, the process reduced an established community to a group of eight to 10 households that are "still holding on by our fingertips".

10. Process and Timeline

Tenant organizations in a number of communities were uneasy with the consultation because of the short time that had been allowed to assemble feedback from members. One major group noted that its comments to the Ottawa consultation March 7 should be seen as tentative, pending a members' meeting March 17; ideally, the group would have liked two to three months to develop a response to the Consultation Paper. A tenant in Toronto said the schedule for implementing the new legislation is "dangerous". Tenant organizers are volunteers, and had insufficient time to review the Green Paper together. "We don't feel consulted," she said.

This concern was echoed by landlords in Ottawa, who questioned whether a process that ended April 5 would allow the Minister and his staff to incorporate their concerns in the permanent legislation. "The consultation process isn't as extensive as it's made out to be," said one Ottawa landlord, who said he would be willing to see Bill 4 continue for a few more months to allow sufficient time for the development of a permanent rent control policy. "If this is really consultation," he stated, "three or four months won't make that much difference." A landlord representative said the new rules for rent control should be made known soon as possible, but "that's not to say we don't want to have good consultation on the permanent legislation."

Another Ottawa landlord said the Ministry would get more out of a two-hour private meeting with building managers than a four-hour public bearpit session. "If you really want to know what will allow landlords to continue to build, you can find it out up here in another hour."

A small landlord in Windsor who had serious concerns about financial losses under Bill 4 still commented that the consultation process "continues to demonstrate what is exemplary NDP policy." A Barrie landlord expressed concern over some proposals in the Consultation Paper, but said "it is encouraging to know that someone is listening for the first time in 16 years." A community legal worker in St. Catharines described the Green Paper as "the best thing I've read in nine years. It has made me aware of what a complex issue rent control is. It's terrific." A Sudbury landlord representative noted that "there are problems on all sides. We know it's very complex, and we want to sit down and work with you. We don't feel it's helpful for us to polarize either ourselves or our tenants."

Yet some tenants said the consultation process, and the government's rent control plans, fell short of their expectations. A

Scarborough tenant said the meeting "ran into problems before the opening address. You're trying to keep the tenants focussed on a small number of issues." The Green Paper "does not meet the NDP's campaign promise to deal with the problems in affordable housing," and fails to present statistics "on the overcrowding, the poor, those doubled-up in units, the one million Ontarians earning less than $8,500 a year." She concluded that "the landlords are wrapping you guys around your little finger."

Another Scarborough tenant said he couldn't understand the Green Paper because he "was not educated". A tenant at the same session said he was "insulted at only being given five minutes" at the hearing, and said the Consultation Paper was a departure from the policy he had supported during the election. Another participant said his union supports the annual guideline increase promised by the NDP during the election. "Many tenants have suffered hardships," he said, arguing that the Green Paper was not rent control but rent review, a reworking of Bill 51. "That's not what the tenants voted for in my block," he said.

A tenant organizer in Hamilton said he and his colleagues "were somewhat shocked when the Green Paper came out...An enormous number of rental people out there want to see some reform with teeth in it, which means new legislation that is going to be enforced." A community legal worker in the same session agreed that "the general approach taken in the Green Paper is too much a matter of tinkering with the present legislation and improving it. That's an easy solution, but it's not a real solution."

11. General Issues

Many communities discussed the complexity of the current rent review process. Both landlords and tenants complained that the regulations are difficult to understand. "The cost of preparing the papers wipes out the increase," said a small landlord in Barrie. A labour representative in Thunder Bay described the current system as "complex, formal and intimidating," and commended the government "for trying to develop a housing policy that will work and is responsive to the needs of people who have to rent."

On the other hand, some participants questioned whether it would be possible to develop a single approach that would cover all aspects of a complex industry. A Sarnia landlord said he appreciated the interest in simplicity, but suggested that "one blanket law could do a lot of damage. No doubt, it would result in a tremendous windfall for some parties and a disaster for others."

Landlords across the province expressed concern that Bill 4 and the permanent legislation would threaten a traditional partnership between the public and private sectors in the provision of affordable housing. Some landlords said rents should be allowed to reflect higher vacancy rates arising from new construction, although others admitted that it would take time to build confidence within the industry and bring new units onstream in a deregulated system. An Oshawa developer said a 10 or 11% return on equity, comparable to first mortgage money, would be sufficient to get him involved in new construction. He estimated the cost to tenants at about $30 per unit per month.

A staff member from a major regional housing authority was one of several presenters who linked this issue to capital expenditures, suggesting that new construction and a higher vacancy rate would force landlords to take better care of their buildings and hold down rents. A Kingston property manager cited an international conference organized by the John Deutsch Institute at Queen's University, where participants universally condemned the impact of rent controls. In Britain, after 73 years of rent controls, only 9% of the housing market is supplied by the private sector.

Some presenters said construction dollars are shifting to commercial and condominium construction, because residential rents have not kept pace with inflation. A Sault Ste. Marie landlord said rent controls are having a serious effect on the construction trades in our province and, indirectly, on municipal tax revenues. One landlord said rent controls have made housing a less challenging market, and stated that there is more pressure in an overbuilt

commercial sector to cut rents and guarantee excellent maintenance; another said rent controls had helped him by reducing the vacancy rate in his buildings. Many landlords said they could get a better return for the money from savings bonds, although a chartered accountant in Sudbury indicated that the net difference between housing and an unsheltered investment is minimal. As well, Leslie Robinson of Toronto's Affordable Housing Action Group said no relationship necessarily existed between rent control and vacancy rates. She referred to British Columbia, where removal of rent controls had not resulted in rental housing starts, and to Quebec, where strict controls and high vacancy rates coincide. "Canada signed a U.N. convention stating that housing is a right," she noted, and Ontario has to live up to that convention. "Housing is a home, not a business."

Al Sant and Mike Doug from the Barrie Builders' Association stated that "the inherent distortions in the rent control system keeps people from building homes." Mr. Doug explained that the 160 members of the Association, mostly tradespeople, have recognized that rent control legislation will have "a tremendous impact on the homebuilding industry." He said government agreement to a pass-through would be a strong signal to the trades and repair industries: "Get back to work." A North Bay landlord noted that "we live in a capitalist society, where there's supply and demand. If there were a little bit more freedom, landlords would build more buildings, rent them out and create places for people to live, because that's the way the law of supply and demand works." One Kingston tenant said he understood the need to stimulate the housing market, "but who suffers from that? I guess all of us who are renting, but I believe it's really the poor that are hard done by. Lifting controls is a subtle form of price-fixing."

A number of tenants said the province should reinstitute its program of low-interest loans for first-time homebuyers as a means of increasing the housing supply and creating construction jobs.

Participants from the co-op sector identified another way of encouraging tenants to take ownership – metaphorically and literally – of their homes. "Your Ministry might want to look at the metamorphosis that happens in tenants who move into housing co-ops and find themselves thrust into the role of being landlords," said a co-op advocate in North Bay. Many former members of tenant advisory groups have sought greater security of tenure in co-ops, but have seen their perspective on housing gradually change. He said tenant protection legislation should give residents first right of refusal when their buildings are sold.

Another participant said the co-op movement is strongly supportive of rent control. "We have people moving into co-ops all the time that tell horror stories that they've experienced, and if anything can be done to stabilize their lives and enable them to stay in their homes, we think that's very important," he said. "Any housing strategy quite properly needs a number of elements, and rent control is only one of them."

Several landlords expressed concern that rent controls represent a strong incentive for more affluent households to remain in inexpensive units, so that controls keep affordable housing out of reach for those who need it most. A Toronto landlord said the majority of tenants are not impoverished, and those that are in need should receive subsidies, not rent control.

One landlord in Richmond Hill said tighter rent review restrictions mean that he is "not renting to anybody you're trying to protect." He said low vacancy rates enable him to pick and choose his tenants, and he chooses higher-income earners. A participant from Welland stated that "the landlord will not pick someone on mother's allowance," if there is another applicant who earns $50,000 per year. "Low-income people are shut out of the system," he said. "The government is creating ghettos by building public housing." A property manager speaking in Hamilton said low-income tenants in expensive units end up subsidizing more affluent occupants of cheaper units when their rent is used to cover a landlord's overall costs. A landlord who took part in the same session recommended lifting rent controls for tenants who pay less than 15 or 20% of their income for shelter, thus encouraging them to free up their affordable units. He suggested the government is losing revenue from an effective rent subsidy that could properly be seen as a tax-free benefit; this revenue, in turn, could be recycled into rent subsidies.

A Sudbury participant described a "serious housing crisis" in his area, indicating that 42% of the 1,300 people who sought crisis housing last year were living with friends or family, or in a temporary shelter. "If there are that many people in the span of a year who do not have their own home, there's something drastically wrong," he said. "They say rent control stops people from building affordable housing. But British Columbia has no rent controls, and the only city in Canada with a lower vacancy rate than Sudbury is Matsqui, B.C. It's a problem right across the province."

Although some landlords in most communities agreed with the statement in the Consultation Paper that affordable housing is a fundamental right, many of their colleagues felt differently. While food and shelter are rights, said one presenter, "I have no right to

live in your house and pay a price that happens to be affordable to me. If products are to be available, we must pay what they're worth or they won't be there." If one sector is asked to meet the needs of those who are in economic difficulty, he said, the job won't get done. "Housing may be a necessity, but it's not a right," said another Ottawa landlord. "It's a privilege. The type of accommodation you live in is the type of accommodation you can afford. Tenants' rights are infringing on my right to earn a decent wage."

Many landlords said they felt persecuted by the government's approach to rent control. "It's getting to the point where landlords have no rights," said a presenter in Thunder Bay. "The tenants can do anything they want, but for the landlord it seems that you always have to go to a lawyer while they get free legal aid...I'm seriously thinking of getting out of the business, and it's not so much the profit – it's the harassment. It just seems that you try to be fair and you don't get fairness in return." A Thunder Bay landlord described his decision to enter the rental market in 1980 as "the worst mistake I've ever made. If I could unload this week I would unload the whole works, but it's going to be tough. You're going to give some of the stuff away." A property manager in Kitchener commented that "it rankles me when people are spending money at my expense, and spending it on what I would consider non-essential items like cars and trips. The issue is not affordability, but proper access to it."

An Ottawa tenant who identified herself as a 75-year-old widow who has lived in her building for 17 years told the other side of the story. She described the gradual erosion of services and maintenance standards that had accompanied a series of rent increases in her building, noting that the landlord had never kept promises to replace rugs and furniture following a flood in the early years of her tenure. Recently, a neighbour who paid for her own repairs had to move to a less expensive unit down the hall, and the landlord is reaping the benefit of the improvements, she said.

"If they're not making any money, why are they buying more properties?" she asked. "I've heard the other side. My father was a landlord, and my father always said he would sooner have a good tenant and charge less rent, and we'd both be happy."

One tenant from Mississauga expressed concern about friends who could not afford to move out of their parents' homes. "It's disheartening," he said. "They should be able to stay in Mississauga and have a respectable place to live." A Newmarket housing support worker who helps young single men find homes in the North York area said most of her clients are transient and earn minimum wage. The average

apartment rents for $700 per month. "They are forced to rent rooms, yet many are not suited to living in people's homes," she said. This "vicious circle" of low wages and lack of affordable housing drives many people back to the streets, and sometimes back to jail. "It's a crisis situation," she concluded.

A tenant organizer speaking in Toronto commented on "the difference in the way tenants and landlords are mobilized. Landlords are protecting economic rights, while tenants are protecting their homes."

In many communities, at least one landlord said the Consultation Paper seemed oriented to problems that don't exist outside Toronto. A Barrie landlord said real estate flips are not a problem north of Highway 7, and would likely be inhibited by a new capital gains tax. Another landlord stated that "we don't need rent control in London. Rent control came from Toronto." But Sandy Bell of the London and District Labour Council echoed many tenants outside Metro, arguing that controls "are very necessary to protect tenants against high increases and substandard maintenance, and to allow tenant participation in decisions that affect their homes."

There were also suggestions that the government regulates private landlords through rent control legislation, then competes with them and takes away their tenants through public housing developments that are maintained by the taxpayer. A Thunder Bay property manager said there is a further inequity between non-profit and private housing because non-profits can claim a rebate on the federal Goods and Services Tax.